and several copies of the paper were sent by mail to subscribers in Washington, D. C. *Held*, that since the act of publication was in Indiana only, the District of Columbia has no jurisdiction over the offense. *United States* v. *Smith*, 173 Fed. 227 (Dist. Ct., Ind.).

The law makes libel a criminal offense because the dissemination of defamatory matter tends to disturb the public peace. See *State* v. *Lehre*, 4 Hall's L. J. (S. C.) 48, 53. Accordingly, it has been held that every publication is a distinct offense. *The King* v. *Carlisle*, 1 Chit. 451. In holding that the act of publishing was not committed where the papers were received, the court in the principal case ignores a long line of decisions. *Rex* v. *Watson*, 1 Campb. 215; *Com.* v. *Blanding*, 3 Pick. (Mass.) 304. See *Trial of the Seven Bishops*, 12 Cobbett's St. Tr. 183, 333. The defendants' own physical act was completed when the papers were mailed, but the machinery thus set in motion continued to act until they were received; and if the analogy of the law of battery and homicide is followed, the crime must be held to have been committed where the act took effect. See *Robbins* v. *State*, 8 Oh. St. 131; *Simpson* v. *State*, 92 Ga. 41. Some cases, however, hold that an indictment can be brought either where the libel is mailed or where it is received, on the ground that a misdemeanor can be tried where any part thereof is committed. See *Rex* v. *Burdett*, 4 B. & Ald. 95, 170. But even this view would be equally fatal to the decision in the principal case.

EQUITY — PRIORITY OF EQUITIES — EFFECT OF ASSIGNMENT OF CHOSE IN ACTION. — By fraud X induced a mortgagee to assign to him the mortgage debt. X then assigned it for value to Y, who was ignorant of the fraud. *Held*, that Y takes subject to the equity of the defrauded mortgagee. *Hubbell, Hall & Randall Co.* v. *Brickman*, 64 N. Y. Misc. 370 (Sup. Ct.).

The established rule in New York is that in the absence of estoppel an assignee takes subject to all equities against his assignor in favor of third parties. See *Central Trust Co.* v. *West India Co.*, 169 N. Y. 314, 324. But this view is opposed to the weight of authority. See AMES, CASES ON TRUSTS, 310. The usual explanation of the majority rule is that a defrauded assignor by giving to his assignee an apparently good authority to collect is estopped to deny it. *Putnam* v. *Clark*, 29 N. J. Eq. 412. It is more satisfactory to rest the rule upon the broad principle that equity will not deprive a *bonâ fide* purchaser of a legal interest. See 1 HARV. L. REV. 7. It is erroneous to assume that an assignee's rights are merely equitable; there are legal interests less than title which equity will respect. Thus when an attempted transfer of real property is not completed, but the defect may be cured without calling upon the transferor to do any act, the rights of a *bonâ fide* transferee are superior to existing equities. *Duff* v. *Randall*, 116 Cal. 226; *Hume* v. *Dixon*, 37 Oh. St. 66. The assignee of a chose in action gets a legal right to perfect his title to the money, unmolested and without calling upon the assignor for aid. This right should prevail over latent equities. *Cf. Dodds* v. *Hills*, 2 H. & M. 424; *Ortigosa* v. *Brown*, 47 L. J. Ch. 168, 172.

EQUITY — SPECIFIC PERFORMANCE — DOCTRINE OF MUTUALITY. — An oral agreement was made to lease for eight years certain mining lots in return for a promise to pay royalties on the ore mined and a covenant to work the mines continuously. The plaintiff was given possession, spent a considerable sum on improvements, and worked the mines for over three years. To a bill for specific performance of the lease the defendant raised the objection of lack of mutuality. *Held*, that the defendant must specifically perform his part of the agreement. *Zelleken* v. *Lynch*, 104 Pac. 653 (Kan.). See NOTES, p. 294.

EVIDENCE — TESTIMONY GIVEN AT FORMER TRIAL — ABSENCE OF WITNESS FROM JURISDICTION IN CRIMINAL CASE. — On an appeal by the prisoner after his conviction in the police court, the prosecution offered to introduce evidence of testimony which had been given in the former trial by a witness who had sub-

sequently removed from the state. *Held*, that such evidence is inadmissible in criminal cases. *Holifield* v. *City of Laurel*, 50 So. 488 (Miss.).

In civil cases it is almost universally held that evidence of testimony given in a former trial of the same issue between the same parties is admissible if the witness is absent from the jurisdiction. *Wheeler* v. *Jenison*, 120 Mich. 422. Upon the question of applying this rule in criminal cases, however, the courts are not in agreement. There seems to be no sufficient reason for a distinction between the two classes of cases. *People* v. *Devine*, 46 Cal. 45; *Vaughan* v. *State*, 58 Ark. 353, 370. *Contra*, *U. S.* v. *Angell*, 11 Fed. 34; *People* v. *Newman*, 5 Hill (N. Y.) 295. The introduction of the evidence works no greater hardship on the state or the prisoner, than on a party to a civil action. In both cases there has been the all-important opportunity for cross-examination. The constitutional provision that an accused person shall be confronted by the opposing witnesses is very generally understood to be merely declaratory of the common law, and so subject to all the exceptions to the hearsay rule. See *State* v. *McO'Blenis*, 24 Mo. 402. Thus, in the state in which the principal case was decided, the death of a witness will make evidence of his testimony admissible in a subsequent trial of the same case. *Lipscomb* v. *State*, 76 Miss. 223.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — "THE INSURED" TO FURNISH PROOFS OF LOSS. — A mortgagor took out insurance payable to the mortgagee as his interest might appear. The policy provided that the mortgagee's interest should not be invalidated by any act or neglect of the mortgagor, and that "the insured" should furnish proofs of loss within a certain time. *Held*, that recovery by the mortgagee is not barred by the lack of proofs within the stipulated time. *Ohio-German Insurance Co.* v. *Krumm*, 12 Oh. Cir. Ct. R. N. S. 364.

In the absence of any provision against invalidation of the policy by neglect of the mortgagor, by the weight of authority, the mortgagee could not recover. *Shapiro* v. *Western Home Insurance Co.*, 51 Minn. 239. The "union mortgage clause" protects the mortgagee from the mortgagor's neglect, but not from his own act or neglect. *Genesee, etc. Association* v. *U. S. Fire Insurance Co.*, 16 N. Y. App. Div. 587. Whether failure to furnish proofs was his own neglect depends on whether the term "the insured" applies to the mortgagor alone, or also to the mortgagee. The cases and text-books frequently suggest that the mortgage clause makes a separate collateral contract of insurance between the underwriter and the mortgagee. See *Queen Insurance Co.* v. *Dearborn, etc., Association*, 175 Ill. 115; 1 CLEMENT, FIRE INSURANCE, 33. If such a view is correct, the mortgagee is as truly "the insured" as the mortgagor. But it is believed that the language referred to is inaccurate, and that the mortgagee is not a promisee in the insurance contract, but merely a beneficial third party. Hence "the insured" refers only to the mortgagor and the principal case is correct.

INSURANCE — MUTUAL BENEFIT INSURANCE — DESIGNATION OF ILLEGAL BENEFICIARY. — A person insured in a mutual benefit society designated an illegal beneficiary. After the insured's death, the administratrix claimed the amount of the certificate. *Held*, that she is entitled to it. *Mullen* v. *Woodmen of the World*, 122 N. W. 903 (Ia.).

The right of a person insured in a mutual benefit society to designate a beneficiary is a mere naked power of appointment. *Pilcher* v. *Puckett*, 77 Kan. 284. This power is not property. *Maryland Mut. Ben. Soc., etc.* v. *Clendinen*, 44 Md. 429. If there is no designation, no one can recover as beneficiary. *Eastman* v. *Provident Mut. Relief Asso.*, 62 N. H. 555. And the appointment of an illegal beneficiary is equivalent to a total failure to appoint. *Rindge* v. *N. E. Mut. Aid Soc.*, 146 Mass. 286. Yet the principal case is supported by several decisions. In some, the mistake is made of treating the power of the assured to appoint a beneficiary, as a right to the benefit. *Newman* v. *The Covenant Mut. Ins. Asso.*,